

**Common Orders in IA.04/2024 and
IA.05/2024, in OS.186/2019, Dated:05.06.2024.**

IA.04/2024 was filed by the Petitioners/ Plaintiffs to recall PW1 for further examination.

IA.05/2024 was filed by the Petitioners/ Plaintiffs to condone the delay in filing additional documents on their side.

The contents of the affidavits filed by the Petitioners/Plaintiffs in all the applications which are similar read as the plaintiffs have filed the suit for partition and separate possession on the ground the suit properties are in joint possession and enjoyment. The Defendants have contented the suit properties are not the separate property of Periyasami Udaiyar. Therefore necessity has arisen for the petitioners to produce 'A' Register extract of the year 1937 to prove the right of the Petitioners. Hence the petitions.

The Respondents have not raised any serious objections.

Heard. Both sides. The case is at the stage of further evidence of the plaintiffs. Since the defendants have denied the right of plaintiffs during cross examination of PW1, the present applications have been filed. The evidence of the plaintiffs is not completed. The Respondents have opportunity to deny the document during cross examination and also at the stage of their evidence. As such there cannot be any prejudice to the Respondents. Accordingly this court is inclined to allow the application in the interest justice. No cost.

Sd./-Ashfaq Ahamed,
Sub Judge,
Uthangarai.

**Common Orders in IA.03/2024, IA.04/2024,
IA.05/2024 in OS.10/2014, Dated:05.06.2024.**

**IA.03/2024 was filed by the Petitioners/
Plaintiffs to reopen the case of the Plaintiffs.**

**IA.04/2024 was filed by the Petitioners/
Plaintiffs to recall PW1 for further
examination.**

**IA.05/2024 was filed by the Petitioners/
Plaintiffs to condone the delay in filing
additional documents on their side.**

**The contents of the affidavits filed by the
Petitioners/Plaintiffs in all the applications
which are similar read as the plaintiffs have
filed the suit for partition and separate
possession on the ground the suit properties
are in joint possession and enjoyment. The
Plaintiffs have put up house construction in
the property and residing in the set property.
The Revenue authorities have issued
possession Certificate, Citta, House Tax
receipt to the said property. The Plaintiffs are
in possession of documents regarding said
property and the evidence of the petitioners
regarding the said property is very much
essential to decide the relief claimed in the suit.
Hence the present petitions.**

**The Respondents have filed counter
separately and the gist of the counter it is
common read as the petitions are false and
vexatious. At the time of filed the suit 3rd
plaintiff and 1st Plaintiff have stated that they
are residing in a portion of the property and
doing agriculture on the remaining property.
There is no mention above the house in the suit
schedule nor the Plaintiffs were residing in the
property. The petitioners have manipulated
documents to show that they are residing in
the survey No.39/2A, 2C. The documents**

relied by the petitioners are no way related to the suit property. The evidence of the Respondents was closed on 08.02.2021 and the case was at the stage of arguments and the petitions have been filed to delay the proceedings. There is no merits in the application and prays for dismissal.

The Point for consideration is whether the petitions are liable to be allowed?

Point.

No oral evidence adduced on the applications. Heard both sides. Records perused. Admittedly, the suit in OS.10/2014 was filed by the Plaintiffs as early in the year 2013 for the relief of partition and separate possession. The trial in the suit was commenced on 16.12.2019 and the plaintiff side evidence was closed on 08.02.2021. The evidence of the defendants was completed on 19.07.2022 and the case is pending at the stage of arguments since 02.08.2022. The plaintiffs by way of present applications want to adduced additional evidence regarding their possession in the house property and the documents issued by the Revenue Authorities. On going through the plaint averments and description of the property there is no mention of any house property by its Door.No. extent and the nature of the possession over the said property. The Pleading and the oral evidence of the plaintiffs also does not point out the plaintiffs are claiming any right or share in the said house property. When the description of the property does not mention any house property, the examination of the plaintiffs to place documents regarding house property is essential and it will be helpful for the just decision of the case was not substantiated. In the absence of any pleadings with regard to the house property in the suit and evidence the production of the documents regarding the

house property is only an attempt on the part of the plaintiffs to delay the proceedings of the case. The petitioners have failed to prove the nexues between the documents and the suit properties. The description of the suit properties is only with regard to the agricultural lands. Accordingly this court is of view the petition has been filed only to delay the proceedings and there is no merits in the applications.

In the result the petitions stands dismissed. No cost.

**Sub Judge,
Uthangarai.**

Common Orders in IA.09/2024 and IA.10/2024, in OS.118/2014,
Dated:05.06.2024.

IA.09/2024 was filed by the Petitioners/ Defendants 10 to 13 to reopen the case. IA.10/2024 was filed by the Petitioners/ Defendants to recall PW1 and PW2 for further cross examination.

The contents of the affidavits filed by the Petitioners/ Defendants in all the applications which are similar read as the Respondents/ Plaintiffs have filed the suit for partition and separate possession. PW1 was cross examined on 18.04.2018 and PW2 was cross examined on 25.10.2018 and subsequently due to the filing of various petitions parties have been added and amendments were done. In the above circumstances PW1 and PW2 have to be recalled for further cross examination. Hence this petitions.

The Respondents have not filed counter but orally submitted the petitions are not sustainable and the petitions have been filed only to delay the proceedings and only to protract the proceedings the petitions have been filed. There is no merits and prays for dismissal.

The Point for consideration is whether the petitions are liable to be allowed?
Point.

No oral evidence adduced on the applications. Heard both sides. Records perused. Admittedly, the suit was filed by the Respondents for the relief of partition and separate possession. Though the suit has been filed in the year 2014 and trial commenced in the year 2015. The cross examination of PW1 and PW2 was completed in the year 2018. It is true due to filing of various applications some parties were transposed and amendment of plaint was done. Even after a amendment the plaintiffs have not adduced any additional evidence. The evidence of the defendants was also not completed and even before the examination of the defendants side evidence, the petitioners have filed application one after another to delay the proceedings of the case. In the present petition also the petitioners have not stated the reason and purpose to recall PW1 and PW2 for further cross examination. The attempt of the petitioner to recall PW1 and 2 after a period of 7 years shows the petitioners without adducing evidence on their part are trying to delay the proceedings. In the absence of any valid reason are existence of any additional evidence after amendment or transpose of the parties the question of recalling PW1 and 2 does not arise. Accordingly this court is of view the petitioners have not shown any bonafide cause in filing the application and the same is liable to be rejected.

In the result petitions stands dismissed. No cost.

Sd./-Ashfaq Ahamed,
Subordinate Judge,
Uthangarai.

IA.01/2022 in HMOP.60/2021, Dated:05.06.2024.

The petition has been filed by the Petitioner/ Husband. U/s.5 of limitation act to condone the delay of 160 days in filing the application to restore the main case which was dismissed for default on 25.08.2021.

The contents of the affidavit filed by the petitioner read as the case was posted on 25.08.2021 for enquiry and prior to that the petitioner was affected with viral fever and was hospitalized. The petitioner is residing at Coimbatore and therefore he could not able to inform his counsel. Due to non appearance of the petitioner the case was dismissed for default. The petitioner came to know about the dismissal only after he met his counsel and has filed the present application. The petitioner has got valid grounds to succeed in the main case. Hence the petition.

The Respondent/Wife has filed counter stating the petition is not sustainable. The petitioner has not produced any documents regarding his illness or treatment. The petitioner has got no valid grounds in the main case and only to harass the respondent has filed the petition for divorce and allowed the same to be dismissed. There is no merits in the application and the delay was not properly explained and prays for dismissal.

**The Point for consideration is whether the petition is liable to be allowed?
Point.**

Heard both sides. Records perused. Admittedly the petitioner has filed the petition for divorce and the same was dismissed for non appearance of the petitioner. The reason stated by the petitioner is illness and hospitalization. Though no documents was filed to prove the illness, considering the matrimonial relationship and the issues raised by the petitioner in the petition will have an impact in the day to day life of the parties this court is of view the petitioner be given an opportunity to prove his case on merits. It is also needless to mention that during the dismissal of the petition, Covid Pandemic was prevailing in some parts of the state and restrictions were imposed and therefore this court is inclined to allow the application in the interest of justice.

In the result the petition stands allowed. No cost.

IA.01/2022 in HMOP.60/2021,
Dated:05.06.2024.

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The Respondent/Wife has filed counter stating the petition is not sustainable. The petitioner has not produced any documents regarding his illness or treatment. The petitioner has got no valid grounds in the main case and only to harass the respondent has filed the petition for divorce and allowed the same to be dismissed. There is no merits in the application and the delay was not properly explained and prays for dismissal.

The Point for consideration is whether the petition is liable to be allowed?
Point.

Heard both sides. Records perused. Admittedly the petitioner has filed the petition for divorce and the same was dismissed for non appearance of the petitioner. The reason stated by the petitioner is illness and hospitalization. Though no documents was filed to prove the illness, considering the matrimonial relationship and the issues raised by the petitioner in the petition will have an impact in the day to day life of the parties this court is of view the petitioner be given an opportunity to prove his case on merits. It is also needless to mention that during the dismissal of the petition, Covid Pandemic was prevailing in some parts of the state and restrictions were imposed and therefore this court is inclined to allow the application in the interest of justice.

In the result the petition stands allowed. No cost.

**Subordinate Judge,
Uthangarai.**

Orders in CrImP.87/2024 in
SC.152/2022, Dated: 05.06.2024

The Petitioner/ Complainant has filed the petition U/s.91 Cr.PC. to summon production of documents on the side of prosecution on the ground the victim in the case LW2 and LW3 were treated at Manipal Hospital, Salem However the wound Certificate issued by the Hospital was not collected by the then investigating officer and place to before the court. The production of the wound certificate of the victims in the case is very much necessary to prove the charges against the accused. The Doctor who treated the victims was already cited as a witness and therefore the production of the documents is essential. Hence the petition.

The Respondents accused though taken notice in this application on 03.04.2024. have not chosen to file any counter or objections.

Heard both sides. Admittedly the accused were charged for the offences U/s.307 IPC. and other provisions. The victims are LW2 and LW3 and they have been examined before the court and cross examined by the defence. The victims were treated at Manipal Hospital, Salem is also admitted. By the present application the prosecution wants to place the wound certificates issued by the Hospital.

The Doctor who treated the victims was cited as witness. The evidence of the doctor will be on the basis of wound Certificate and other treatment records. When the wound certificate was not collected by the investigating officer and placed before the court they evidence of the doctor who treated the victims cannot be completed. The wound Certificate of the victims are material documents to prove the medical evidence. As such in the facts and circumstances of this case it is necessary to direct the Hospital authorities to produce the wound certificate of the victims. The Respondents have got opportunity to cross examine the doctor who treated the victims and challenge the wound certificate. As such their cannot be any prejudice to the Respondents. Accordingly this petition is allowed.

In the result Petition is allowed. No cost.

Subordinate Judge,
Uthangarai.

OS.145/2017, Dated: 05.06.2024

The suit is pending at the stage of steps for a longtime. The suit is called alongwith OS.137/2017. The suit property in the present suit and OS.137/2017 is one and the same and the parties are also interconnected. The suit in OS.137/2017 is for the relief of declaration of title and injunction. The suit in OS.145/2017 was filed the defendants in OS.137/2017 challenging the validity of the document relied by the plaintiff in OS.137/2017. Since the suit in OS.137/2017 is for declaration of title the issues can be decided and answered for both the suits in OS.137/2017. If separate evidence was recorded in both the suits, the evidence cannot be appreciated in a better manner. As such in the interest of justice both the suits in OS.137/2017 and 147/2017 are ordered to be tried jointly and evidence is ordered to be recorded in OS.137/2017. Call with OS.137/2017. Call on

Subordinate Judge,
Uthangarai.

